IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 593 OF 2005

Jan Sahyog Nirman Properties
Private Ltd. ... Petitioner
Versus.
The State of Maharashtra & others.... Respondents.

Shri Robuin Jaisinghani i/by M/s./Basant Trilokani &
Co.for the Petitioner.

Shri Amjad Sayed, A.G.P. for Respondent No.1 & 7.

Ms.Aruna Savla for Respondents Nos.2 to 6.

CORAM : H.L.GOKHALE, &
ABHAY S. OKA, JJ.

DATED : 20th FEBRUARY, 2006.

P.C.:

1. Heard Shri Jaisingani in support of this petition. Shri Sayed appears for Respondents Nos.1 and 7. Ms.Savala appears for Respondents Nos.2 to 6. The petition is filed by a developer of properties seeking to challenge the communication received from Respondent No.7, Director of Department of Archeology dated 15th November 2003 as also the subsequent notice dated 19th December 2003 issued by Respondent No.6, who is an Assistant Engineer of the Municipal Corporation. The notice by the Municipal Corporation was issued under section 354A of the Bombay Municipal Corporation Act directing stoppage of construction which was then being carried out by the Petitioner. The letter dated 15th November 2003 issued by the 7th Respondent also calls

upon the Petitioner to forthwith stop the construction. The letter clearly stated that the parcel of land on which the Petitioner was constructing was in an area surrounding Banganga Lake and that Banganga Lake and its surroundings have been declared as the protected area by the Government of Maharashtra under the Maharashtra Ancient Monuments and Archeological Sites and Remains Act, 1960. Section 21 of this Act imposes restrictions on enjoyment of property rights in protected areas and the protected area are defined as archeological sites which are declared to be as such under the Act.

2. There is no dispute that the concerned parcel of land is in the protected area. That being so, what was expected of the Petitioner was to approach the authority concerned and to obtain its permission, if at all any such construction was to be started. In the present petition the prayers are on the footing that now the construction has been carried out and the Municipal Corporation be directed to provide drainage and sewerage connection and also the occupation certificate. Shri Jaisingani, learned Counsel appearing for the Petitioner submits that the Government had no objection to this construction. He has relied upon letter dated 17th October 1998 issued by the Under Secretary to the Government. It is however material to note that this letter is only with respect to the Government's approval for utilisation of unconsumed F.S.I. According to him

the Heritage Committee of the Municipal Corporation is the proper authority.

3. Shri Sayed, the learned Asstt.Government Pleader appearing for the Director has drawn our attention to the reply filed by the Director himself. He has pointed out that the Petitioner had filed a writ petition earlier being Writ Petition No.3543 of 1991. Prayer (c) of this petition was to challenge notice dated 2nd May 1991 which was then issued by the Director. We are shown that notice. The notice clearly informs the Petitioner that the provisions of the Maharashtra Ancient Monuments and Archaeological Sites and Remains Act, 1960 apply to the particular area and inspite of that construction has been started and it will be stopped immediately. The very petition was subsequently withdrawn before a Division Bench on 9th August 2004. This being the position, Shri Sayed submits that there is no question of the communication dated 15th November 2003 being challenged in the present petition.

4. We have noted the submission of both the learned Counsel. We are informed that the particular area has been notified as protected area under the concerned Act. That being so, the construction in such an area is not protected unless the Director approves the same. This being so, the only way out for the Petitioner is to apply to the Director by pointing out the reasons as to

why this structure, which the Petitioner has put up ought to be tolerated. We are informed by Shri Jaisingani that originally a building of ground plus four upper floors was proposed, but the Petitioner has now restricted it only to the ground floor and there is only a ground floor structure which has been put up. Shri Jaisingani states that the Petitioner will apply to the Director pointing out what are the circumstances in its favour and on receiving the application, the Director will decide the same on its own merits. It is only in the event that the application is granted, the question of connecting the structure with the Municipal drainage, sewerage and grant of occupation certificate will arise and not otherwise. Petition stands disposed of.

(H.L.Gokhale, J.)

(Abhay S.Oka, J.)